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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 343

G. SEALS AIKEN,

Appellant,

vs.

WILLIAM RICHARDSON.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

STATEMENT AS TO JURISDICTION

G. SEALS AIKEN,
In Propria Persona.

BEN F. SWEET,
F. L. BREEN,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 343

G. SEALS AIKEN,

Appellant,

vs.

WILLIAM RICHARDSON.

STATEMENT AS TO JURISDICTION

In compliance with Rule 12(1) of the Rules of the Supreme Court of the United States, Appellant files a Statement as to Jurisdiction, disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the decision of the Supreme Court of Georgia in this case.

Statutory Provisions Sustaining Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237(a) of the Judicial Code (U. S. C. Sec. 344), reading as follows:

> "A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had . . . where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the constitution, treaties, or laws

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> of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ of error shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of said State Court, and may, in its discretion, award execution or remand the cause to the Court from which it was removed by the writ."

and under U. S. C. A. Title 28, Section 1257, providing in part as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * * * *
>
> "(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be had as a matter of right on writ of error.

Georgia Statutes Questioned

In this case, the validity of certain Statutes of the State of Georgia, as construed and applied by the Supreme Court of Georgia to the pleadings in this case and the acts and activities of Appellant as set forth hereinafter in this Statement, are drawn in question on the ground of their being repugnant to the Constitution of the United States, and the decision of the Supreme Court of Georgia in this

case is in favor of the validity of said Statutes. The Statutes drawn in question are as follows:

> Georgia Code Section 24-210: "The officer called on by rule nisi, as provided in the preceding section, shall fully respond in writing to said rule, which answer shall be under oath taken at the time the answer is filed; and if the answer is not denied, the rule shall be discharged, or made absolute, according as the court may deem the answer sufficient or not. The movant of the rule may traverse the truth of such answer, in which case an issue shall be made up and tried by a jury at the same term, unless good cause of continuance be shown, which may be done once only by either party. Upon the trial of such issue the court shall discharge the rule, or make the same absolute, according as the verdict of the jury may be for or against the officer."
>
> Georgia Code Section 24-206: "If any sheriff, coroner, justice of the peace, constable, clerk of the superior court, or attorney at law shall fail, upon application, to pay to the proper person or his attorney any money he may have in his hands, which he may have collected by virtue of his office, the party entitled thereto or his attorney may serve said officer with a written demand for the same; and if not then paid, for such neglect or refusal the said officer shall be compelled to pay at the rate of 20 per cent per annum upon the sum he has in his hands, from the date of such demand, unless good cause is shown to the contrary."

Timeliness

The Supreme Court of Georgia rendered its decision in this case on May 12, 1953 ("Appendix A"; R. 96). On May 20, 1953, Appellant duly and properly filed his Motion for Rehearing with the Supreme Court of Georgia (R. 100-124, 125), which was denied on June 11, 1953. Appellant presented a Motion for Reconsideration, and it was ordered filed and denied by said Court on July 15, 1953 (R. 126-

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137). The Supreme Court of Georgia is the highest Court of this State, and its decision of May 12, 1953, in this case became final on July 15, 1953. The Petition for Appeal and other papers required by the Rules of this Court are filed within 90 days from the date said decision of the Supreme Court of Georgia became final, and this appeal is therefore timely made.

Opinions

The opinion of the Supreme Court of Georgia of May 12, 1953, is attached hereto as "Appendix A." It also appears in the record at Pages 96-99.

Statement of the Nature of the Case and Rulings of the Court Bringing it within Jurisdictional Provisions Relied On, and Cases Believed to Sustain Jurisdiction.

On May 28, 1949, Judge R. H. Pharr of the Superior Court of Fulton County, Georgia, issued a Penal Rule Nisi against Appellant, a member of the Bar of Georgia since June 2, 1920, ordering him to show cause why he should not be required to pay over to Appellee the sum of $2,283.33, and why, after a hearing, a Rule Absolute should not be issued against Appellant commanding him to make immediate payment of said sum. This Penal Rule was based upon a motion of Appellee charging Appellant with a number of crimes, including the following: Solicitation of the legal business of Appellee; forging the name of Appellee on a draft; wrongfully withholding from Appellee the sum of $2,283.33 allegedly due him out of collection; false representations; false swearing, etc. Appellant duly filed his sworn answer setting up his contract of employment, denying in toto the charges made, showing he had paid appellee the exact and specified amount ($1,591.33) due him under the contract (as evidenced by a photostatic copy of said

check, R. 23), and showing he was not (and had not been) in contempt of court, and that he was not guilty of any of the charges made against him in said penal proceeding.

Therefter, Appellee filed a Traverse of Appellant's Answer, raising many issues of fact. Georgia Code Section 24-210 provides that such issues of fact must be determined by a jury upon submission of evidence, but the said statute was construed and applied to Appellant to permit the striking of his answer and the entering of a rule absolute against him for $2,189.38 and twenty per cent per annum penalty thereon from May 23, 1949, until paid, and all costs, without the submission of evidence, without a trial, and without a jury; thereby depriving Appellant of due process of law and of equal protection of the law in violation of Section I of the Fourteenth Amendment of the Constitution of the United States by adjudging him in contempt of court (not in presence of court), and subjected him to being incarcerated in jail and disbarred upon his failure to comply with said penal rule absolute.

On June 21, 1949, Appellee filed a Motion to Strike Appellant's original Answer. On October 23, 1950, Judge Andrews of Fulton Superior Court sustained Appellee's special grounds 2, 3, 4, and 5 of said Motion, but overruled the general grounds 1 and 6. In overruling general grounds 1 and 6, Judge Andrews then unmistakably held that the Appellant's Answer did set forth an issuable defense and did show reason why a Rule Absolute should not issue. The order further provided that, "The respondent is hereby allowed ten days to amend his answer."

Appellant did not file an amendment under said order because he had already filed an answer denying the charges and setting up the contract and alleging he had paid Appellee the exact and specified amount ($1,591.33) due him thereunder, and Judge Andrews had ruled, as aforesaid, that his answer set forth an issuable defense and showed

reason why a Rule Absolute should not issue, and this ruling had never been vacated or set aside and therefore fixed the law of the case in said respect.

On November 3, 1950, Appellee filed another Motion to strike Appellant's Answer, upon the ground that no amendment had been filed by Appellant in ten days "as allowed" by the order of October 23, 1950, and prayed for a Rule Absolute.

Notwithstanding the fact that Superior Court Judge Andrews had overruled general grounds 1 and 6 of Appellee's Motion to strike Appellant's Answer (the effect of which was to hold that Appellant's Answer contained allegations setting up triable issues of fact), the said Judge on November 17, 1950, struck Appellant's Answer, and on November 20, 1950, entered a penal Rule Absolute against Appellant for $2,189.38 and 20 per cent penalty per annum thereon from May 23, 1949, until paid, and all costs, without any evidence, without a trial, and without an opportunity to Appellant to present any evidence whatever in his own behalf.

Appellant appealed to the Supreme Court of Georgia from said decision, and that Court in *Aiken* v. *Richardson and Vice Versa*, 207 Ga. 735, 64 S. E. 2nd 54(3), transferred the case to the Court of Appeals of Georgia with the statement that, "There is no attack upon the constitutionality of any statute." Thereafter, the Court of Appeals of Georgia, in *Aiken* v. *Richardson*, 85 Ga. App. 180, 68 S. E. 2nd 228, affirmed the Superior Court. Appellant then applied to the Supreme Court of Georgia for a writ of certiorari to review the decision of the Court of Appeals of Georgia. Said writ was denied. Appellant then appealed to the Supreme Court of the United States from the Court of Appeals of Georgia. This Court, in *Aiken* v. *Richardson*, 344 U. S. 802, 73 S. Ct. page 15, dismissed Appellant's appeal "for the want of a substantial federal

question." Appellant filed a Petition for Rehearing, which was denied on December 15, 1952 (73 S. Ct. 282).

* * * * * * *

On January 12, 1953, Appellant filed in the Superior Court of Fulton County, Georgia, a Motion, as authorized by Georgia Code Sections 110-701, 110-702, and 110-709, to Vacate and Set Aside the Rule Absolute, as void for want of jurisdiction, which was entered against him in the penal and contempt Money Rule proceeding, on the ground that it appeared on the face of the record or pleadings that the said penal Rule Absolute was entered against him without a trial, without any evidence whatever against him, without any opportunity whatever to present any evidence in his own behalf, and without a jury, and that the said record and pleadings, therefore, presented on their face a "defect not amendable," requiring the judgment to be set aside as void under Georgia Code Section 110-702. Appellant urged in said motion to set aside said Rule Absolute that it was void for want of jurisdiction in that the Georgia statutes under which it was entered under the circumstances stated, as construed and applied to the acts, activities, and pleadings of Appellant in this case, are repugnant to Section I of the Fourteenth Amendment of the Constitution of the United States, for the reason that they deprived Appellant of due process of law in violation of said Amendment by permitting the arbitrary striking of his Answer denying guilt in said penal Money Rule proceeding, and the entering of a Rule Absolute against him for said principal, penalty, and costs, without any evidence whatever in support of said order, without a trial, without a jury, and without the right to Appellant to present any evidence whatever in his own behalf, and subjecting Appellant to being incarcerated in jail and disbarred unless he complies with said penal Rule Absolute;

such a judgment being described by the U. S. Supreme Court in *Hovey* v. *Elliott*, 167 U. S. 409, as "void for want of jurisdiction . . . a mere arbitrary edict, clothed in the form of a judicial sentence."

Judge Moore of Fulton Superior Court overruled Appellant's said Motion to Set Aside said Rule Absolute, and Appellant thereupon appealed to the Supreme Court of Georgia (the highest court of this State) on said Federal constitutional grounds, and excepted and assigned error upon every one of the grounds of his Motion to Set Aside, in his Bill of Exceptions to the Supreme Court of Georgia. That Court affirmed Judge Moore and rendered a decision on May 12, 1953, in favor of the validity of the above quoted Georgia Statutes, as construed and applied to Appellant, and which were attacked by Appellant as repugnant to the Fourteenth Amendment of the Constitution of the United States. Appellant duly filed a Motion for Rehearing in the Supreme Court of Georgia, urging and insisting upon all of his Federal constitutional grounds as set forth in his Motion to Set Aside the Rule Absolute as Void, and in his Bill of Exceptions. The said Court overruled said Motion for Rehearing on June 11, 1953, without any change in its decision. A Motion for Reconsideration was presented to the Supreme Court of Georgia on June 22, 1953, and was denied on July 15, 1953.

On the hearing in the Superior Court before Judge Moore on Appellant's said Motion to Set Aside the Rule Absolute as Void, the said Judge allowed Appellant to introduce evidence in the form of affidavits, depositions, and other documents. This evidence was not objected to by counsel for Appellee, and no evidence was offered by him. The brief of said evidence presented by Appellant on said Motion to Set Aside was incorporated in the Bill of Exceptions to the Supreme Court of Georgia and certified by Superior Court Judge Moore as true and correct. The said evidence showed

positively and without contradiction that all of the charges made against Appellant in said penal proceeding were untrue; that Appellant was not (and had not been) in contempt of court; that he had paid Appellee immediately upon collection the exact amount ($1,591.33) due him under the contract of settlement, and as admitted by Appellee in his own deposition, which Appellant introduced on said hearing before Judge Moore. Judge Moore, nevertheless, overruled said Motion to Set Aside the Rule Absolute. Appellant orally excepted to the judgment of Judge Moore in overruling said Motion to Set Aside at the time it was rendered, and excepted and assigned error thereon in his Bill of Exceptions to the Supreme Court of Georgia upon his State and Federal constitutional grounds, as set forth in said Motion to Set Aside and in said Bill of Exceptions (R. 84-86; 6-16).

Appellant drew in question in his Motion to Set Aside before Judge Moore, in his Bill of Exceptions to the Supreme Court of Georgia, in his briefs, Motion for Rehearing, and Motion for Reconsideration in the Supreme Court of Georgia, the validity of the Georgia Statutes identified as Georgia Code Sections 24-210 and 24-206 on the ground of their being repugnant to the Fourteenth Amendment of the U. S. Constitution as construed and applied to Appellant in this case.

Appellant also excepted and assigned error in said manner to said ruling of Judge Moore on the ground that it deprives him of his property in the amount of the Rule Absolute and of his liberty if he does not submit to said deprivation, all without due process of law and without equal protection of the law in violation of Section I of the Fourteenth Amendment of the Constitution of the United States, by upholding said Rule Absolute entered after striking Appellant's Answer denying guilt, and without any evidence, without a trial, and without any opportunity

to Appellant to present any evidence in his own behalf or to argue his case.

The decision of the Supreme Court of Georgia of May 12, 1953, shows that the said Court did not even mention or consider, in arriving at its decision affirming Judge Moore, the evidence presented to the said Judge by Appellant on the hearing of said Motion to Set Aside. Appellant urged in his Motion for Rehearing and in his Motion for Reconsideration (R. 100, 126) in the Supreme Court of Georgia that the decision of said Court affirming Judge Moore in overruling the Motion to Set Aside the Rule Absolute, after Judge Moore went behind the same and allowed said evidence presented by Appellant, deprived Appellant of due process of law and of equal protection of the law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution, in that the said evidence showed without contradiction that all of the charges made against Appellant in said penal proceeding were untrue, that Appellant was not (and had not been) in contempt of court, that he had paid Appellee immediately upon collection the exact amount ($1,591.33) due him under the contract of settlement, and as admitted by Appellee in his deposition, which Appellant introduced on said hearing before Judge Moore.

The prior appeal of this case to the Supreme Court of the United States was from the Court of Appeals of Georgia, the appeal to the Supreme Court of Georgia having been transferred to the Court of Appeals of Georgia upon the ground that there were no constitutional questions and that there was "no attack upon the constitutionality of any statute." *Aiken* vs. *Richardson*, 207 Ga. 735, 64 S. E. 2nd 54(3). Under the Constitution of Georgia the Supreme Court of Georgia has exclusive jurisdiction in cases which involve "the construction of the Constitution of the State of Georgia or of the United States" and "in all cases in

which the constitutionality of any law of the State of Georgia or of the United States is drawn in question." (Article VI, Section II, Paragraph IV of the Constitution of Georgia of 1945 Georgia, Code Section 2-3704.)

The Supreme Court of Georgia expressly states in its decision here appealed from that it "has jurisdiction . . . because of the attack on the constitutionality of Code Section 24-206," but claims it was not necessary to pass upon said constitutional question. It was necessary, however, to pass upon the substantial Federal constitutional questions adequately and duly raised and insisted upon by Appellant in this case, under the facts and circumstances briefly presented in this Statement, and as fully shown by the record, and the effect of the decision of the Supreme Court of Georgia is necessarily in favor of the validity of the Georgia statutes attacked by Appellant as being repugnant to Section I of the Fourteenth Amendment of the U. S. Constitution. *Hovey* v. *Elliott*, 167 U. S. 409, 17 S. Ct. 841; *Lovell* v. *City of Griffin*, 303 U. S. 444, 58 S. Ct. 666; *Norris* v. *Alabama*, 294 U. S. 587, 55 S. Ct. 579; *Yick Wo* v. *Hopkins*, 118 U. S. 356, 6 S. Ct. 1064; *Chapman* v. *Crane, Admr.*, 123 U. S. 540. The other Georgia Statutes attacked by Appellant as repugnant to the U. S. Constitution, in said Motion to Set Aside and in the appeal to the Supreme Court of Georgia, were not specifically mentioned in its decision, but the effect of said decision was also in favor of their validity. *People of the State of New York ex rel. Bryant* v. *Zimmerman, et al.*, 278 U. S. 63, 49 S. Ct. 61.

The following applicable and controlling authorities show beyond question that it was not too late for Appellant to attack, in the motion to set aside the penal rule absolute as void, the Georgia Statutes therein assailed as repugnant to the Fourteenth Amendment of the U. S. Constitution, as construed and applied to him, and that the

said Statutes as so construed and applied are undoubtedly repugnant to the Fourteenth Amendment of the U. S. Constitution:

Hovey v. *Elliott*, 167 U. S. 409; 17 S. Ct. 841;
Prescott v. *Bennett*, 50 Ga. 268;
Wakefield v. *Moore*, 65 Ga. 268, Georgia Code Sections 110-701, 110-702, and 110-709;
Jones v. *Jones*, 181 Ga. 747, 184 S. E. 271;
Towns v. *Springer*, 9 Ga. 130;
Texas v. *White*, 10 Wall. 483;
In re: Oliver, 333 U. S. 257, 68 S. Ct. at 499;
Cooke v. *U. S.*, 267 U. S. 517, 45 S. Ct. 390;
Manley v. *State of Georgia*, 279 U. S. 1, 49 S. Ct. 215;
Western & Atlantic R. R. v. *Henderson*, 279 U. S. 639, 49 S. Ct. 445; 303 U.S. 944 58 S. Ct. 666;
Lovell v. *Griffin*, ~~55 Ga. 609, 191 S. E. 152;~~
Norris v. *Alabama*, 294 U. S. 587, 5 St. Ct. 579;
Yick Wo v. *Hopkins*, 118 U. S. 356, 6 S. Ct. 1064.

And see also *U. S.* v. *Walker*, 109 U. S. 258, 3 S. Ct. 282, holding that, "Although a court may have jurisdiction over the parties and the subject-matter, yet if it makes a decree which is not within the powers granted to it by the law of its organization, its decree is void."

The foregoing authorities also show conclusively that it was not too late for Appellant to attack, as void for want of jurisdiction and as denying due process of law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution, the Rule Absolute itself in Appellant's said Motion to Set Aside the same, and that it is void for said reasons.

How Federal Questions Sought to Be Reviewed Were Raised, and the Way in Which They Were Passed upon by the Court.

I

The Federal question presented in the first assignment of error in the present appeal was raised, as authorized in Georgia Code Sections 110-701, 110-702, and 110-709, in the Superior Court of Fulton County, Georgia, in Appellant's Motion filed in that Court on January 12, 1953, to Vacate and Set Aside, as void for want of jurisdiction and as denying due process of law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution, the penal Rule Absolute entered against Appellant, without evidence and without a trial, in said Penal and Contempt Money Rule proceeding (R. 7-8). It was also urged before said Court orally and by assignment of error thereon in the hearing on said Motion. It was then preserved and insisted upon by incorporating it in the Bill of Exceptions (R. 86) to the Supreme Court of Georgia and duly certified as true by Presiding Judge Moore of the Superior Court. The substance of said exception and assignment was that the Georgia Statute identified as Georgia Code Section 24-210, as construed and applied to Appellant in this Penal and Contempt Money Rule proceeding as herein set forth, is repugnant to and violative of Section I of the Fourteenth Amendment of the Constitution of the United States in that the words:

> "The officer called on by rule nisi, as provided in the preceding section, shall fully respond in writing to said rule, which answer shall be under oath taken at the time the answer is filed; and if the answer is not denied, the rule shall be discharged, or made absolute, according as the court may deem the answer sufficient or not,"

have been construed and applied to authorize the court, in its discretion and without evidence or trial, to determine whether the respondent has fully responded and to find the answer to be vague, indefinite, and evasive, even though it contains issuable facts and shows reasons why a Rule Absolute should not be issued, and to be stricken for evasiveness, and to render a Rule Absolute against respondent under said circumstances, without evidence and without a trial, even though the answer of the respondent has been traversed by the movent of the rule. That the Statute as thus construed is too vague and indefinite to provide a sufficiently ascertainable standard of guilt and permits the Court in its arbitrary discretion, without evidence and without a trial, to adjudge the respondent guilty of the criminal charges in the Penal and Contempt Money Rule, and to sentence and punish him accordingly. That as thus construed and applied to Appellant, a citizen of the United States, the said Statute deprives him of his property in the amount of the Rule Absolute, and of his liberty if he fails to surrender his property as required by said arbitrary Rule Absolute, without due process of law and without equal protection of the law, in violation of Section I of the Fourteenth Amendment of the U. S. Constitution. That the said Statute, as thus construed and applied to Appellant, declares him guilty or presumptively guilty of the crimes charged against him in said Penal Rule, and that the said Statute therefore creates a presumption that is arbitrary and operates to deny a fair opportunity to repel it, and thus violates the due process clause of the Fourteenth Amendment of the U. S. Constitution, which provides that no state shall deprive any person of life, liberty, or property without due process of law. That, as construed and applied, it violates said provision of the Constitution because it vests arbitrary, unlimited, and discriminatory

power in any Superior Court Judge to strike the answer of the respondent denying the criminal charges in the Penal Rule issued against him by the said Judge, or any judge, and to adjudge the respondent guilty and sentence and punish him accordingly, without any evidence and without a hearing. That the said Statute is repugnant to Section I of the Fourteenth Amendment of the U. S. Constitution for the reason that it has been construed and applied to Appellant in such a manner as to deprive him of due process of law in violation of said amendment by permitting the arbitrary striking of his answer denying guilt in said Penal Money Rule proceeding, and the entering of a Rule Absolute against him for said principal, penalty, and costs, without any evidence whatever in support of said judgment, without a trial, without a jury, without the right to Appellant to present any evidence whatever in his own behalf, and subjecting Appellant to being incarcerated in jail and disbarred if he fails to comply with said Penal Rule Absolute.

The substantial Federal question presented in this ground of Appellant's Appeal is practically identical with that involved in the case of *Hovey* v. *Elliott*, 167 U. S. 409, 17 S. Ct. 841 (a penal money rule case like the one at bar), holding in the headnotes as follows:

> "1. . . . it is a denial of due process of law to strike out an answer, and render a decree pro confesso as a punishment for contempt.
>
> "2. A judgment pro confesso against a defendant whose answer has been stricken out under the assumed power to thus punish for contempt is void for want of jurisdiction, and may be collaterally attacked."

It is *not* a case *like Zucht* v. *King*, 260 U. S. 174, 43 S. Ct. 25, involving the police power of a state to provide for compulsory vaccination, in which this court held that the ques-

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tion as to the validity of the ordinance there involved was not sufficiently substantial to support the writ of error in view of the prior decisions of this court that, "It is within the police power of a state to provide for a compulsory vaccination." This court also said in that case:

> "Unlike Yick Wo v. Hopkins, 118 U. S. 356, 6 Sup. Ct. 1064, 30 L. Ed. 220, these ordinances confer not arbitrary power, but only that broad discretion required for the protection of the public health."

The case at bar clearly comes within the prohibition of the Fourteenth Amendment as stated in *Yick Wo* v. *Hopkins, supra.* In *Hovey* v. *Elliott, supra,* the U. S. Supreme Court has specifically held that it is a denial of due process of law in violation of the Fourteenth Amendment to strike out the answer of a defendant in a Penal Money Rule proceeding and render a decree *pro confesso* against him as a punishment for contempt. *There are no decisions to the contrary.*

The construction and application of the Georgia Statute here involved (Georgia Code Section 24-210) to Appellant to allow the striking of his sworn answer denying guilt and showing innocence in a penal proceeding and adjudging him guilty of the crimes charged against him in said penal proceeding by entering a Penal Rule Absolute against him (without a trial and without any evidence) requiring him to pay the arbitrary sum of $2,189.38 principal and 20 per cent penalty per annum thereon from May 23, 1949, clearly brings the said Statute within the prohibition of the Fourteenth Amendment of the U. S. Constitution, as shown by *Hovey* v. *Elliott, supra.* It places Appellant in the position of holding his "means of living, or any material right essential to the enjoyment of life, at the mere will of another" (the Judge who rendered said "arbitrary edict" against him), and this is "intolerable in any country where freedom

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prevails, as being the essence of slavery itself." In the language of the U. S. Supreme Court in *Yick Wo* v. *Hopkins*, 118 U. S. 356, 6 S. Ct. 1064, even if said statute could be considered as "fair on its face, and impartial in appliance, yet" *it has been applied and administered to Appellant in the particulars briefly stated above "by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights," Appellant being thereby denied equal justice in violation of the Fourteenth Amendment.*

As stated by the Supreme Court of Georgia in *Holcombe* v. *Dupree*, 50 Ga. 336, the very foundation of a Rule Absolute is the contempt of court. This is in accordance with the uniform decisions of the U. S. Supreme Court. *Texas* v. *White*, 10 Wall. 483. All the authorities, Federal and State, are to the effect that this is a penal proceeding. *Texas* v. *White, supra; Haygood* v. *Haden*, 119 Ga. 463, 46 S. E. 625; *Breen* v. *Phillips et al.*, 169 Ga. 13, 149 S. E. 565; *Felton* v. *Smith et al.*, 52 Ga. App. 436, 183 S. E. 634; *Chipman* v. *Barron*, 2 Ga. at page 230.

The only reason Appellant is not now in jail under said Penal Rule Absolute is because he has made the required legal bond in such a case preventing his being incarcerated in jail pending the decision of this court on his Federal constitutional grounds presented in this appeal.

In the case of *Yick Wo* v. *Hopkins*, 118 U. S. 356, 6 S. Ct. 1064, the Appellant was "adjudged to pay a fine of $10, and, in default of payment, be imprisoned in the county jail at the rate of one day for each dollar of fine until said fine should be satisfied." In the case at bar, Appellant has been summarily ordered in a penal proceeding, without a trial and without evidence, to pay Appellee the arbitrary sum of $2,189.38 and 20 per cent penalty per annum thereon until

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paid (which amounts to over $4,000 at the present time) and he will be incarcerated in jail and disbarred if he does not comply with said "arbitrary edict."

Jurisdiction of this court on this ground is supported by the authorities already cited on pages 11 and 12 of this Statement and by *Herndon* v. *Lowry,* 301 U. S. 242.

II

The Federal question presented in the second assignment of error was raised, urged, insisted upon, and preserved in the same manner as the first Federal question (R. 15, 86). The substance of said exception and assignment of error was that the Georgia Statute identified as Georgia Code Section 24-206, as construed and applied to Appellant in this Penal and Contempt Money Rule proceeding as herein set forth, is repugnant to and violative of Section I of the Fourteenth Amendment of the U. S. Constitution in that it permitted the arbitrary striking of his answer denying guilt and showing he had paid Appellee the exact amount ($1,591.33) due him under the contract of settlement, and the entering of a Rule Absolute against him for $2,189.38 with 20 per cent penalty per annum thereon from May 23, 1949, until paid, and all costs, without any evidence in support of said Rule Absolute, without any opportunity to Appellant to present any evidence in his own behalf, without a trial, and subjecting Appellant to being incarcerated in jail and disbarred upon his failure to comply with said Penal Rule Absolute, and that the said statute is therefore too vague and indefinite to authorize such a penalty in that it does not provide for any trial as a condition precedent or subsequent nor state what is meant by "unless good cause is shown to the contrary"; that it is too vague and indefinite to provide a sufficiently ascertainable standard of guilt or basis for such a penalty; that it

creates a presumption that is arbitrary and operates to deny a fair opportunity to repel it, and denies Appellant, a citizen of the United States, of due process of law and of equal protection of the law guaranteed to him by Section I of the Fourteenth Amendment of the Constitution of the United States.

Jurisdiction of this court under this ground is supported by the authorities cited on pages 11 and 12 of this statement, and under Ground I above, and by *Herndon* v. *Lowry*, 301 U. S. 242.

III

The federal question presented under this assignment of error in the present appeal was raised, urged, insisted upon, and preserved in the same manner as the first Federal question (R. 9-11; 86). The substance of this exception and assignment of error is that the Supreme Court of Georgia erred in its decision of May 12, 1953, in affirming the judgment of Superior Court Judge Moore of February 6, 1953, overruling Appellant's Motion to Set Aside the Penal Money Rule Absolute as Void, and in thereby depriving Appellant, a citizen of the United States, of his property to the extent of the amount of the Rule Absolute, and of his liberty by subjecting him to imprisonment as in contempt of court unless he pays the same and also to disbarment and the deprivation of his right to practice and enjoy his profession as a lawyer and to earn his living thereby, if he fails to submit to said confiscation of his property; all without due process of law and without equal protection of the law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution by depriving him of the benefit of his sworn answer denying the charges made against him in said Motion for the Penal Rule, the portions of said answer admitted by Appellee in his Traverse of said Answer, the benefit of the contract between him and

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Appellee involved in said proceeding, the benefit of the legal presumption of innocence of the crimes charged against him until proven guilty beyond reasonable doubt by legal evidence, the benefit of his counsel to defend him in said proceeding, the right to a list of the witnesses on whose testimony the charges against him are founded, the right to compulsory process to obtain the testimony of his own witnesses, the right to be confronted with the witnesses against him, the right to present evidence in his own behalf (including the depositions already taken supporting his defense), the right to a public and speedy trial by an impartial jury, and the benefit of all the applicable and controlling principles of law and trial and appellate procedure granted by the State of Georgia to other persons in its jurisdiction in like circumstances and similar situations. Said Section I of the Fourteenth Amendment of the U. S. Constitution is quoted under the third assignment of error.

The provisions of the Constitution of Georgia referred to in said assignment of error are set forth in Appellant's said Motion to Set Aside the Judgment (R 11-14).

A mere statement of the foregoing ground shows this Honorable Court has jurisdiction, as well expressed in the following brief language of Mr. Chief Justice White in *Riverside & Dan River Cotton Mills, Inc.* v. *Menefee*, 237 U. S. 189, 35 S. Ct. 579:

> "That to condemn without a hearing is repugnant to the due process clause of the 14th Amendment needs nothing but statement."

Jurisdiction of this court under this ground is supported by the authorities cited under Ground I above, and on pages 11 and 12.

IV

The Federal question presented in the fourth assignment of error in this appeal was raised, urged, insisted upon, and preserved in the same manner as the first Federal question (R. 84-86). The substance of said exception and assignment is that the Supreme Court of Georgia erred in its decision of May 12, 1953, in affirming the judgment of Superior Court Judge Moore of February 6, 1953, overruling Appellant's Motion to Set Aside as Void said Penal Rule Absolute, after going behind the same and allowing evidence presented by Appellant on said Motion, because the said evidence showed positively and without contradiction that Appellant had paid Appellee immediately upon collection the exact and specified amount ($1,591.33) due him under the contract of settlement and as admitted by Appellee in his own deposition (which Appellant introduced on said hearing before Judge Moore); that all of the charges made against Appellant in said Penal Money Rule proceeding are untrue; that Appellant was not (and had not been) in contempt of court; and that there was no basis whatever for the Penal Money Rule or the Penal Rule Absolute. (Even if the allegations of Appellee's Motion for Penal Money Rule could be accepted as true, they would at most make out a civil and not a Penal case against Appellant.) That the decision of the Supreme Court of Georgia in affirming Judge Moore's ruling under said circumstances deprives Appellant, a citizen of the United States, of due process of law and of equal protection of the law in violation of Section I of the Fourteenth Amendment of the Constitution of the United States by depriving him of the application and benefit of the following privileges and immunities and principles of law granted to other

citizens of Georgia under like circumstances and in similar situations:

(a) The principle of law laid down in the cases *Holcombe* v. *Dupree*, 50 Ga. 336; *Chipman* v. *Barron*, 2 Ga. 232-6; *Prescott* v. *Bennett*, 50 Ga. 268; and *Wakefield* v. *Moore*, 64 Ga. 268, that a contempt rule against an officer of the court is not subject to the estoppel rule and does not stand in the same category as other cases, and that a rule absolute in such a case is never res adjudicata but is *always open* for the purpose of investigation upon a proper motion or case made, and that the court must necessarily, in a proper case, go behind such a rule absolute or previous adjudication and examine the full and complete truth of the case and render judgment accordingly.

(b) The principle of law requiring the setting aside of the Rule Absolute in this case and the discharge of the rule after Judge Moore properly went behind said Rule Absolute and into the merits of the case and allowed the evidence introduced by Aiken showing positively and without contradiction that Aiken had paid Richardson the exact amount ($1,591.33) due him under the contract of settlement and as admitted by Richardson in his testimony in the record, and that Aiken was not and is not in contempt of court, and that there was no basis whatever for the money rule or rule absolute.

The material evidence presented by Appellant on this point on the hearing of his Motion before Superior Court Judge Moore to Set Aside as Void the Penal Rule Absolute appears in the record at pages 87-94. No objection whatever was made to said evidence by Appellee, and he offered no evidence.

Jurisdiction of this court on this ground is supported by the authorities cited under sub-paragraph (a) above and the following additional authorities:

Norris v. *Alabama*, 295 U. S. 587, 55 S. Ct. 579;
Gallegos v. *State of Nebraska*, 342 U. S. 55, 72 S. Ct. 141.

Grounds upon Which it Is Contended the Federal Questions Thus Involved Are Substantial

The Federal Constitutional Questions involved in this appeal are substantial for the reasons so clearly shown on pages 15 through 18 of this Statement and for the reasons so obvious from the Summary of the Assignments of Error in this Statement.

Assignments of Error I and II present the very substantial Federal Constitutional Questions for review on appeal by this Court that the decision of the Supreme Court of Georgia affirming the judgment of Judge Virlyn B. Moore of Fulton County Superior Court overruling Appellant's Motion to Set Aside as Void the Penal Rule Absolute entered against him by Superior Court Judge E. E. Andrews (without a Trial and Without any Evidence) for $2,189.38 and twenty per cent penalty per annum thereon from May 23, 1949, until paid, is necessarily in favor of the validity of the Georgia Statutes identified as Georgia Code Sections 24-210 and 24-206 attacked by Appellant as repugnant to and violative of Section I of the Fourteenth Amendment of the U. S. Constitution in the particulars specified in Assignments of Error I and II, and thereby deprives Appellant of his property and liberty in the particulars there specified.

For the first time in American History, a United States citizen (Appellant) stands convicted, sentenced, penalized, and punished as a forger, an embezzler, a cheat, a swindler, a perjurer, a false swearer, and a solicitor of legal business, by the "arbitrary edict" (*Hovey* v. *Elliott, supra*) in the form of a Penal Rule Absolute of one man, Judge E. E. Andrews, of Fulton County, Georgia, Superior Court, without a trial, without any evidence, and without any law whatever to support it; the Motion to Set Aside the same being denied by Superior Court Judge Virlyn B. Moore

and affirmed by six of the seven Justices of the Supreme Court of Georgia in the decision appealed from.

Unless this honorable Court notes jurisdiction of this appeal and reverses the decision of the Supreme Court of Georgia affirming Judge Moore's judgment overruling Appellant's Motion to Set Aside said Penal Rule Absolute rendered under said circumstances, Appellant will be deprived of his most priceless possession—a good name and reputation acquired by a lifetime of honorable living. (A good name is rather to be chosen than great riches . . . Proverbs 22:1.) See in this connection *Abbott* v. *National Bank of Commerce of Tacoma, Wash.*, 175 U. S. 409, 20 S. Ct. 153. It will deprive him of his profession and of his only means of a livelihood, to which he has devoted 33 years of his life without a blemish, and of his liberty by imprisonment if he fails (or is unable) to comply with said "Arbitrary Edict."

Even if Appellant were willing to accept the conviction of and sentence for the serious criminal charges made against him in said Penal proceeding, in the form of said Penal Rule Absolute rendered without a trial and without any evidence, and to pay the thousands of dollars arbitrarily required thereby, it could still be used as a basis for his disbarment and the deprivation of his only means of livelihood and also his imprisonment, as the decision of the Supreme Court of Georgia affirming said "Penal Rule Absolute" states that it is "Res Adjudicata," despite the decision of the U. S. Supreme Court in *Hovey* v. *Elliott*, 167 U. S. 409, that such a judgment rendered under such circumstances is void for want of jurisdiction and constitutes a denial of due process of law guaranteed by the Fourteenth Amendment of the U. S. Constitution, and the prior uniform decisions of the Supreme Court of Georgia to the same general effect.

The Georgia Statutes (Georgia Code Sections 24-210 and

24-206) under which this "arbitrary edict" was issued have been properly and timely attacked by Appellant as repugnant to the Fourteenth Amendment of the U. S. Constitution, and the decision of the Supreme Court of Georgia is necessarily in favor of their validity, thereby giving the Supreme Court of the United States jurisdiction beyond question of this appeal on the substantial Federal Constitutional questions involved in a matter of grave and public concern.

As shown by this Statement, the Assignments of Error, and the Record, the said Georgia Statutes, as construed and applied to Appellant, place all of his property (including his good name and reputation and his profession and only means of livelihood) and his liberty subject to the arbitrary will of Judge E. E. Andrews of Fulton County Superior Court.

There is nothing in all the annals of American Jurisprudence comparable to such an "arbitrary edict." The most shocking tragedy is that it was rendered in Georgia, U. S. A., and not in Georgia, U. S. S. R.; that it was rendered by a State Judge of the U. S. A. to a loyal and law-abiding U. S. citizen, and not by a Commissar in Russia to some enslaved serf or communist, and that another Judge (Moore) of Fulton County Superior Court overruled a Motion to Set it Aside and he was affirmed by six of the seven Justices of the Supreme Court of Georgia, U. S. A.

The third substantial Federal question presented by this appeal is that the Penal Rule Absolute entered against Appellant, without a trial and without any evidence, deprives him, a citizen of the United States, of his property to the extent of the $2,189.38 principal, twenty per cent penalty per annum thereon from May 23, 1949, until paid, and all costs, and deprives him of his liberty by subjecting him to being incarcerated in jail under alleged contempt of court unless he complies with said Void Penal Rule Abso-

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lute, without due process of law and without equal protection of the law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution by depriving him of his privileges and immunities as a citizen of the United States in the form of the benefits and principles of law applicable to and controlling his case and which have been granted by the State of Georgia to other persons in like circumstances and similar situations in this jurisdiction, as set forth in detail in paragraphs 14, 15, and 16 of his Motion to Set Aside said Judgment (R. 9-14).

The fourth substantial Federal question presented in this appeal is set forth in Assignment of Error IV. It is that the Supreme Court of Georgia deprived Appellant of due process of law and of equal protection of the law in affirming Judge Moore of Fulton County Superior Court in overruling Appellant's Motion to Set Aside as Void the Penal Rule Absolute (Rendered Without a Trial and Without Any Evidence), after going behind the same and allowing evidence presented by Appellant on said Motion, because the said evidence showed positively and without contradiction that Appellant had paid Appellee immediately upon collection the exact and specified amount ($1,591.33) due him under the contract of settlement (R. 87-94; 23), and as admitted by Appellee in his own deposition (R. 92-3), which Appellant introduced on the hearing of said Motion before Judge Moore; that all of the charges made against Appellant in said Penal, Contempt, and Money Rule proceeding are untrue; that Appellant was not (and had not been) in contempt of court; and that there was no basis whatever for the said Penal Rule or Penal Rule Absolute (R. 87-94; 23). Judge Moore followed the law of Georgia in going behind said Penal Rule Absolute and receiving said evidence, but refused to follow the law in refusing to render judgment according to said uncontradicted evidence (by refusing to set aside as void said judgment and to discharge

said Rule) as required by said law. *Holcombe* v. *Dupree*, 50 Ga. 336; *Chipman* v. *Barron*, 2 Ga. 232; *Prescott* v. *Bennett*, 50 Ga. 268; and *Wakefield* v. *Moore*, 65 Ga. 268. The Supreme Court of Georgia did not consider or follow or even refer to said evidence and claimed the Penal Rule Absolute Rendered Without a Trial and Without Any Evidence was res adjudicata This is in direct conflict with the Georgia Law (as shown by the above stated prior uniform decisions of the Georgia Supreme Court) which has been applied by the Supreme Court of Georgia to others in like circumstances and similar situations, and Appellant assigned error on the Federal Constitutional ground that he was thereby deprived of due process of law and of equal protection of the law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution. Appellant was thus deprived of the same substantial and priceless Federal Constitutional rights, privileges, and immunities described above with reference to the arbitrary action of Judge E. E. Andrews of Fulton Superior Court in striking Appellant's answer in the Penal and Contempt Money Rule proceeding and entering a Penal Money Rule Absolute Against him, Without a Trial and Without Any Evidence.

The Appellee introduced no evidence whatever on the hearing of Appellant's said Motion to Set Aside said Penal Rule Absolute and made no objection to the evidence presented by Appellant. Appellee has never presented any evidence in support of said Penal Judgment against Appellant. Evidence would be worthless if it could be arbitrarily disregarded by either court or jury. See in this connection *Mitchum* v. *State*, 11 Ga. at page 633; *Haverty Furn. Co.* v. *Calhoun*, 15 Ga. App. 620, 84 S. E. 138; *McCullough* v. *State*, 11 Ga. App. 612, 76 S. E. 393. The following authorities strongly support this substantial Federal ground and the jurisdiction of the U. S. Supreme Court thereon: *Norris* v. *Alabama*, 294 U. S. 587; *Avery* v. *State of Georgia*, 345

U. S. 559, 73 S. Ct. 891; *North Carolina R. Co.* v. *Zachary*, 232 U. S. 248, 34 S. Ct. 305; *Lawrence et al.* v. *State Tax Comn. of Miss.*, 286 U. S. 276, 52 S. Ct. 556; *Niemotko* v. *State of Maryland*, 340 U. S. 268, 71 S. Ct. 325; *Hague, Mayor et al.* v. *C. I. O.*, 307 U. S. 496, 59 S. Ct. 954; *Urie* v. *Thompson*, 337 U. S. 163; *Moody and Wife* v. *Davis*, 10 Ga. 411-13.

Such a decision as that appealed from in this case has been termed by the U. S. Supreme Court in *Hovey* v. *Elliott*, 167 U. S. 409, as "A Blot Upon Our Jurisprudence and Civilization."

In the language of this Court in *U. S.* v. *Lee*, 106 U. S. 196, 1 S. Ct. 261,

> "If such be the law of this country, it sanctions a tyranny which has no existence in the monarchies of Europe, nor in any other government which has a just claim to well-regulated liberty and the protection of personal rights."

The Federal Questions Properly and Timely Raised in This Case, as Shown by the Foregoing Statement, as Well as the Uncontradicted Record, Are Therefore Very Substantial in Nature and of Grave and Public Concern in the Particulars Set Forth Briefly Above. The Decision of the Supreme Court of Georgia Appealed From Strikes at the Most Elementary and Fundamental Provisions of Our Federal Constitutional Bill of Rights. (*Hovey* v. *Elliott, Supra.*) It Would Also Utterly Destroy "Free Counsel," so "Indispensable to a Fair and Full Administration of Justice." *Mitchum* v. *State of Georgia*, 11 Ga. 633.

If the "Government of the United States is a government of laws and not of men" as stated by the U. S. Supreme Court in *U. S.* v. *Dixon*, 40 U. S. 141, it is essential that jurisdiction be noted in this case.

Conclusion

In the interest of brevity, Appellant incorporates by reference in this Statement as to Jurisdiction his Appeal, Statement, Assignments of Error, and Prayer for Reversal.

It is submitted that the Supreme Court of the United States should note jurisdiction of this cause for final hearing in accordance with the Rules of this Court for the reasons set forth above.

G. Seals Aiken,
In Propria Persona.

Ben F. Sweet,
F. L. Breen,
Of Counsel.

APPENDIX "A"

OPINION OF THE SUPREME COURT OF GEORGIA—MAY 12TH, 1953

No. 18185

ALMAND, *Justice:*

William Richardson, hereinafter referred to as the movant, on May 27, 1949, filed in Fulton Superior Court a money rule against G. Seals Aiken, an attorney at law hereinafter referred to as the respondent. The respondent filed demurrers and a response. An order overruling general demurrers to the rule was affirmed by the Court of Appeals, 80 Ga. App. 591 (56 S. E. 2nd 762). The respondent's application for the writ of certiorari to this court was denied 80 Ga. App. 889. Upon a hearing on certain demurrers and motions, the trial court struck the respondent's answer and entered a Rule Absolute ordering the respondent to pay the movant a specified sum of money, whereupon the respondent filed a bill of exceptions to this court assigning error upon certain interlocutory rulings and on the final judgment, contending that various orders and the final judgment were illegal and void upon many grounds. This court, for want of jurisdiction, transferred the case to the Court of Appeals, 207 Ga. 735 (64 S. E. 2nd 54). The Court of Appeals then affirmed the judgment of the trial court. 85 Ga. App. 180 (68 S. E. 2nd 228). The respondent's petitions for the writ of certiorari to this court and for an appeal to the U. S. Supreme Court were denied. 85 Ga. App. 912; U. S. , 73 S. Ct. 15, L.Ed. .

Before the remittitur of the Court of Appeals was made the judgment of the trial court, the respondent filed a motion to set aside the judgment, contending that the judgment was erroneous, illegal and void for many reasons, one of them being that Code Sec. 24-206 was void because violating Sections 57-101 and 57-112 and "deprives (respondent) of due process and equal protection of the law guaranteed to him by Section 1 of the Fourteenth Amendment." On the hearing of this motion, the trial court permitted the respondent to introduce evidence by way of affidavits, depositions, and documents, all of which related to facts and

matters occurring before the rule was made absolute. The Court overruled the motion to set aside the rule absolute and the exception here is to that order. The assignments of error made in the bill of exceptions, except the contention that Code Sec. 24-206 is invalid, are the same as were urged and passed upon by the Court of Appeals in 85 Ga. App. 180, supra.

HELD:

1. A final judgment between the parties is conclusive as to all issues and matters that actually were or could have been dealt with and put in issue. Code Sec. 110-501. A judgment will not be set aside to let in defenses which were or could have been interposed before judgment was rendered. Hurt Building, Inc., v. Atlanta Trust Co., 181 Ga. 274(1) 283-4 (182 S. E. 187); Evans v. Dennis, 203 Ga. 232, 46 S. E. 2nd 122). So, where a rule absolute was obtained at one term of court against a sheriff, he could not answer at the next term an attachment nisi and put in issue the same grounds that were decided against him before the rule was made absolute. Mize v. Blalock, 71 Ga 861(2).

2. Where a judgment is rendered against a party and he attacks the same by a direct bill of exceptions to the Court of Appeals on the ground that it is erroneous, illegal, and void, and such judgment is affirmed, it becomes final and such party cannot have it set aside upon grounds that were or could have been urged upon the appeal. The judgment is res adjudicata as to such matters. Leathers v. Leathers, 138 Ga. 740 (76 S. E. 44); Hubbard v. Whatley, 200 Ga. 751(2) (38 S. E. 2nd 738). "After a remedial proceeding for contempt has been received and affirmed by the Supreme Court, as to the imprisonment ordered, and as to the terms prescribed in the order for avoiding imprisonment, the terms will not, before the imprisonment has commenced, be changed because the party is unable to comply, unless he has become unable since the order was passed. Defenses or excuses, which were or might have been presented before, are res ajudicata." Thewatt vs. Kiddo, 58 Ga. 300(1). See Gray v. Conyers, 70 Ga. 349;

Mize v. Blalock, 71 Ga. 861, supra; Ryan v. Kingsberry, 89 Ga. 228 (15 S. E. 302).

3. Where, as in the instant case, the respondent seeks to set aside a rule absolute on grounds which were urged or could have been urged on the trial and in the appeal therefrom, the judgment of the trial court refusing to set aside the rule absolute will not be disturbed.

4. Though this court has jurisdiction of the writ of error because of the attack on the constitutionality of Code Sec. 24-206, it does not follow that this question must necessarily be decided, it being well settled that such question will not be passed upon if there is any other ground in the case upon which this court can properly rest the decision. Burns v. State, 191 Ga. 60, 62 (11 S. E. 2nd 350). The respondent could have made an attack on the validity of this section in the trial court and on the appeal therefrom, and failing to do so, he can not now be heard to complain.

5. There was no error in overruling the motion to set aside the rule absolute.

Judgment affirmed. All justices concur except Atkinson, P. J., not participating.

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